



Co-operatives Act 1996

Special resolutions

What is a special resolution? (s.192)

A special resolution is a resolution of a co-operative which is passed-

- (a) by a two-thirds majority at a general meeting of members; or
- (b) by two-thirds majority in a postal ballot (other than a special postal ballot) of members; or
- (c) by a three-quarters majority in a special postal ballot of members.

A special resolution may be passed by a postal ballot only if the rules of the co-operative so permit or the Act requires the special resolution to be passed by postal ballot (including a special postal ballot).

A resolution is not to be considered to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative specifying-

- (a) the intention to propose the special resolution;
- (b) the reasons for the making of the special resolution;
- (c) the effect of the special resolution being passed.

A co-operative must give at least 28 days notice to the Registrar of a proposed special resolution before giving notice to the members of the special resolution.

A failure to give notice to the Registrar does not effect the validity of the resolution.

How majority obtained is ascertained (s.193)

A resolution is passed by a particular majority at a meeting if that majority of the members of the co-operative who, being entitled to do so, vote in person or (if proxies are allowed) by proxy at the meeting vote in favour of the resolution.

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The Federation strongly recommends that each co-operative obtains its own professional advice to ensure that the specific circumstance of the co-operative are taken into account.



Co-operative Federation of Victoria Ltd

A resolution is passed by a particular majority in a postal ballot if that majority of the members of the co-operative who, being entitled to do so, cast formal votes in the postal ballot in favour of the resolution. (s.193)

Disallowance by Registrar (s.194)

The Registrar may disallow a proposed special resolution before it is passed by written notice to the co-operative if the Registrar is of the opinion that the effect of the special resolution if passed would be in contravention of this Act or the regulations or any other law.

Declaration of passing of special resolution (s.195)

At a meeting of a co-operative for the purpose of passing a special resolution, a declaration by the chairperson of the meeting that the resolution has been passed as a special resolution is conclusive evidence of the fact. This does not apply if a poll is taken at the meeting of the co-operative.

A declaration by the returning officer for a postal ballot to pass a special resolution that the resolution has been passed as a special resolution is conclusive evidence of that fact.

Effect of special resolution (s.196)

Except for the circumstances described below, a special resolution has effect from the date it is passed.

A special resolution relating to any of the following has no effect until it is registered-

- (a) the removal of an auditor;
- (b) the expulsion of a member;
- (c) if a government guarantee applies in respect of the borrowings of a co-operative, further borrowing;
- (d) any matter for which a special resolution is required to be passed by special postal ballot.

Lodgment of special resolution (s.197)

A co-operative must lodge 2 copies of each special resolution passed by the co-operative with the Registrar in accordance with this section for registration.

The copies must-

- (a) be lodged within 28 days after the passing of a special resolution or such further period as the Registrar allows; and
- (b) be signed by a director and the secretary of the co-operative; and
- (c) be accompanied by the prescribed lodgment fee.

A co-operative and any officer of the co-operative that knowingly fails to lodge the required copies in accordance with this section is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

Section 197 and section 198 do not apply to a special resolution altering the rules of a co-operative.

Decision of Registrar on application to register special resolution (s.198)

If the Registrar is satisfied that the co-operative has complied with the provisions of the Act and the regulations, and that the resolution is not contrary to this Act or the regulations, the Registrar must register the resolution.

If the Registrar is of the opinion that the effect of a special resolution lodged for registration would be in contravention of this Act or the regulations or any other law, the Registrar may-

- (a) refuse to register the special resolution; and
- (b) give written notice to the co-operative that the special resolution-
 - (i) has no effect, in the case of a special resolution referred to in section 196(2); and
 - (ii) has no effect as from the date that it was passed, in any other case.